

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 467

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Don Tripp

AN ACT

RELATING TO GAME AND FISH; PROVIDING FOR AUTHORITY FOR THE CONTROL AND PREVENTION OF THE SPREAD OF AQUATIC INVASIVE SPECIES IN NEW MEXICO; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 17, Article 4 NMSA 1978 is enacted to read:

"[NEW MATERIAL] AQUATIC INVASIVE SPECIES CONTROL.--

A. Based on a determination of credible scientific evidence, the director, after consulting with the secretary of environment and the state engineer and with the concurrence of the director of the New Mexico department of agriculture, is authorized to designate:

(1) species of exotic or nonnative animals or plants as aquatic invasive species;

.175827.2SA

underscored material = new
[bracketed material] = delete

1 (2) water bodies within the state as infested
2 waters; and

3 (3) specific requirements to decontaminate
4 conveyances and equipment.

5 B. Prior to entering any water body in the state,
6 the owner or person in control of a warning-tagged conveyance
7 or warning-tagged equipment or a conveyance or equipment that
8 has been in an infested water body in New Mexico or elsewhere
9 shall:

10 (1) have the conveyance or equipment
11 decontaminated by a person or entity approved by the director
12 to effect decontamination, and only the person legally
13 effecting the decontamination is authorized to remove a warning
14 tag; and

15 (2) provide certification by a person legally
16 authorized to effect decontamination that the conveyance or
17 equipment is free from infestation or otherwise demonstrate
18 compliance with the decontamination requirements established by
19 the director.

20 C. A qualified law enforcement officer may impound
21 a conveyance or equipment if the person transporting the
22 conveyance or equipment refuses to submit to an inspection
23 authorized by this section and the officer has reason to
24 believe that an aquatic invasive species may be present, or if
25 the conveyance or equipment has a warning tag affixed and the

underscoring material = new
[bracketed material] = delete

1 operator of the conveyance is attempting to enter a state water
2 body and cannot provide evidence that the conveyance or
3 equipment has been decontaminated. A qualified law enforcement
4 officer shall take action to prevent equipment or conveyances
5 believed or known to contain an aquatic invasive species and
6 warning-tagged equipment or conveyances from entering a state
7 water body.

8 D. The impoundment of a conveyance or equipment may
9 continue for a reasonable period necessary to inspect and
10 decontaminate the conveyance or equipment.

11 E. Notwithstanding any provision to the contrary,
12 no motor vehicle that is drawing a conveyance shall be
13 impounded pursuant to this section.

14 F. Any division or authorized agent within the
15 state may:

16 (1) establish, operate and maintain aquatic
17 invasive species check stations at or adjacent to the entrance
18 to any state, county, municipal or federally or privately
19 controlled water body or at or adjacent to the exit point of an
20 infested water body in order to inspect conveyances and
21 equipment prior to a conveyance or equipment entering, being
22 launched onto or being directly exposed to water bodies of the
23 state or upon the conveyance's or equipment's departure from
24 infested waters;

25 (2) affix a warning tag to equipment or a

.175827.2SA

1 conveyance where the presence of an aquatic invasive species
2 has been found; or

3 (3) affix a warning tag to a conveyance or
4 equipment upon the conveyance or equipment leaving an infested
5 water.

6 G. It is unlawful for a person to:

7 (1) knowingly possess, import, export, ship or
8 transport an aquatic invasive species into, within or from the
9 state;

10 (2) knowingly release, place, plant or cause
11 to be released, placed or planted an aquatic invasive species
12 into a water body;

13 (3) remove a warning tag other than as
14 provided pursuant to this section;

15 (4) introduce any tagged conveyance or
16 equipment or any equipment or conveyance from which a warning
17 tag has been unlawfully removed into a water body without first
18 having that conveyance or equipment decontaminated;

19 (5) refuse to comply with a verbal command
20 pursuant to this section;

21 (6) knowingly introduce into any water body a
22 conveyance or equipment that has been exposed to an infested
23 water body or a water body in any other state known to contain
24 aquatic invasive species without first being decontaminated; or

25 (7) violate any other provision of this

.175827.2SA

underscored material = new
[bracketed material] = delete

1 section or any rule adopted by the commission pursuant to this
2 section.

3 H. A person who knowingly or willfully violates the
4 provisions of this section as a first offense shall be charged
5 with a petty misdemeanor or, for a second or subsequent
6 offense, shall be charged with a misdemeanor, and the violation
7 is punishable pursuant to Section 31-19-1 NMSA 1978.

8 I. The divisions shall coordinate the monitoring of
9 the water bodies of the state for the presence of aquatic
10 invasive species, including privately controlled waters if the
11 divisions have authorized access to them or have received
12 permission to monitor them from the persons controlling access
13 to such waters, and the results of the monitoring shall be
14 reported to the director.

15 J. The commission is authorized to adopt rules
16 pursuant to Section 17-1-26 NMSA 1978 as necessary to implement
17 and enforce the provisions of this section.

18 K. The director may enter into cooperative
19 agreements with any federal, state or municipal authority that
20 may be in control of a water body potentially affected by
21 aquatic invasive species.

22 L. As used in this section:

23 (1) "aquatic invasive species" means quagga
24 mussels and zebra mussels and other exotic or nonnative aquatic
25 animals, including invertebrates but excluding those species

.175827.2SA

underscoring material = new
[bracketed material] = delete

1 listed as protected in Chapter 17 NMSA 1978, or any plant or
2 animal species whose introduction into an aquatic ecosystem is
3 determined by the director, after consulting with the secretary
4 of environment and the state engineer and with the concurrence
5 of the director of the New Mexico department of agriculture, to
6 cause or be likely to cause harm to the economy, environment or
7 human health or safety;

8 (2) "authorized agent" means any individual or
9 entity authorized by the divisions to carry out the provisions
10 of this section;

11 (3) "commission" means the state game
12 commission;

13 (4) "conveyance" means a motor vehicle,
14 vessel, trailer or any associated equipment or containers,
15 including, but not limited to, live wells, fish-hauling tanks,
16 ballast tanks, motorized skis and bilge areas that may contain
17 or carry an aquatic invasive species or any other equipment by
18 which aquatic invasive species may be introduced into an
19 aquatic ecosystem;

20 (5) "decontaminate" means to wash, drain, dry
21 or otherwise treat a conveyance in accordance with guidelines
22 established by the director in order to remove or destroy an
23 aquatic invasive species;

24 (6) "director" means the director of the
25 department of game and fish;

.175827.2SA

underscored material = new
[bracketed material] = delete

1 (7) "divisions" means, collectively, the
2 department of game and fish, the department of environment, the
3 office of the state engineer, the interstate stream commission,
4 the energy, minerals and natural resources department, the
5 state parks division of the energy, minerals and natural
6 resources department, the New Mexico livestock board, the New
7 Mexico department of agriculture, the water quality control
8 commission and the department of public safety;

9 (8) "equipment" means an article, a tool, an
10 implement, a device or a piece of clothing, including boots and
11 waders, that is capable of containing or transporting water;

12 (9) "infested water" means a geographic
13 region, water body or water supply system or facility within
14 the state that the director, after consulting with the
15 secretary of environment and the state engineer and with the
16 concurrence of the director of the New Mexico department of
17 agriculture, identifies as carrying or containing an aquatic
18 invasive species;

19 (10) "inspect" means to examine a conveyance
20 or equipment to determine whether an aquatic invasive species
21 is present;

22 (11) "law enforcement officer" means a state
23 or federal certified law enforcement officer;

24 (12) "warning tag" means a tag that is affixed
25 to equipment or a conveyance upon the equipment or conveyance

.175827.2SA

underscored material = new
~~[bracketed material] = delete~~

1 leaving an infested water or upon an inspection determining
2 that the equipment or conveyance contains an aquatic invasive
3 species that requires the equipment or conveyance to be
4 decontaminated; and

5 (13) "water body" means a natural or impounded
6 surface water, including a stream, river, spring, lake,
7 reservoir, pond, wetland, tank or fountain."

8 Section 2. EMERGENCY.--It is necessary for the public
9 peace, health and safety that this act take effect immediately.